IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 2155 of 1993

M/S. SHREE GRINDING MILLS & ORS.
V/S
RAJASTHAN FINANCIAL CORP.& ORS.

Mr. DHIRENDRA PARIHAR Managing Partner of the petitioners, in person.

Mr. S.G.OJHA, for the respondent R.F.C.
No body appears for other respondents.

Date of Order : 2nd May, 2007

HON'BLE SHRI N P GUPTA,J.

ORDER

This petition has been filed by two firms, being M/s. Shree Grinding Mills, and Nidhi Minerals Processing Plant, through their Managing Partner Dhirendra Parihar, against the Rajasthan Financial Corporation, and its officers, hereafter referred to as the RFC, Rajasthan State Industrial Development and Investment Corporation, hereafter referred to as the RIICO, and Jodhpur Vidhyut Vitran Nigam Ltd., hereafter referred to as the Nigam, seeking quashing of the letter dt. 6.1.1992 Ex. 103, direction to the respondents no. 1 and 2 Corporation to give possession to the petitioner of the units of which the possession was taken on 17.1.1992, and a direction has been claimed against the RFC not to charge interest and compound interest from the petitioner for the period during which

the petitioner could not manage and run their business properly, in the alternative a direction is claimed against the RFC to settle the accounts in view of the losses suffered by the petitioner, direction has also been claimed to comply with the directions of RAJCON's report, and provide finance accordingly. Then, in the further alternative prayer for re-schedulement has been made. Then, a direction has been claimed against the RIICO to settle the accounts, in view of the losses suffered by the petitioner, because of faulty allotment of plot. Then, a direction has been claimed against the Nigam to settle the accounts, in view of losses suffered by the petitioner, because of malafide closure of the petitioners' Power Application and not providing the power to the petitioner's unit M/s. Shree Grinding Mills.

A look at Ex.103 shows, that thereby the RFC has replied in reference to petitioner's letter dt. 4.12.91 and 7.12.91, whereby request was made for re-schedulement and waiver of penal interest, and it has been conveyed, that it is not possible to consider his request favourably, as proposal forwarded along with terms and conditions are not acceptable to the RFC, and as such the post dated cheques submitted, were returned. At the same time the petitioner was advised to clear entire over-dues against both the units immediately, failing which action shall be taken under Section 29 of the State Financial Corporations Act,

hereafter referred to as the Act, against both the units. The details of the cheques show, that two cheques amounting to Rs. One Lakh were given for the Unit M/s. Shree Grinding Mills, and cheques of Rs. 1.25 Lacs were given for M/s. Nidhi Minerals & Processing Plant. Be that as it may.

The factual averments made in the writ petition, briefly are, that loan was disbursed to the petitioners in the year 1980, and the plot was allotted by RIICO. However, there was some problem in the allotment of plot, in view of some stay granted by the learned Revenue Appellate Authority. Then, it is alleged that the plant and machinery arrived but the documents could not be retired as lease deed was not executed regarding plot, and RFC expressed its inability to further disburse loan without lease deed. Then, details have been pleaded as to how the matter of allotment of land with RIICO was sorted out, and it was pleaded that possession was given on 11.6.1981. Then, it is alleged that the rate of land was also increased by the RIICO, and thus by this allotment, the petitioners unit suffered losses, for no fault of theirs. According to the petitioner RIICO had written to RFC to extend the moratorium of Shree Grinding Mills, defer the recovery of interest, and provide other possible reliefs. Then, facts have been pleaded about loss of Rs. 13049.76 suffered on account of difference in the price of the plant & machinery, loss of Rs. 12,500/- spent on the construction

on earlier plot, Rs. 4200/- for shifting the machinery etc., and up to this period the petitioner suffered a loss of interest to the tune of Rs. 40,433/-. Then, a loss of Rs. 87,500/- was said to have been suffered on account of wharfage on the plant lying at Railway Station, Jodhpur, and Rs. 26,000/- for traveling expenses for waiver of wharfage. Thus as on 6.11.81 total cash loss alleged to have been suffered to the tune of Rs. 96,172/-, and the petitioner has claimed in para-20, that RIICO may be directed to pay this amount along with compound interest totaling to Rs. 7.47 lacs. Then, it is alleged that RFC agreed for further disbursement of loan after execution of the lease deed, but then the disbursement could not be received till 29.8.81. Then, certain old stories about exchange of correspondence, supervision charges, and recovery and commissioning of plants etc. having been included by the supplier etc. have been pleaded. Then, various correspondence exchanged during the period 1981-82 have been pleaded. Then, it is alleged in para-26, that on 6.9.1985 the petitioner received letter from RFC regarding revival of petitioners' sick unit, but to his surprise the petitioner received another letter dt. 24.9.85, asking the petitioner to make complete payment else face action under Section 29, and then another letter was received to the identical effect being dt. 10.12.85. Then, the petitioner has alleged to have received notice asking the petitioner to clear the dues. Then, in para-27 it is alleged that the

petitioner had received many other letters for the over-dues, though the RFC itself initiated the idea of revival of petitioners' sick units, and despite petitioners best efforts and repeated meeting as and when possible, RFC was not interested in actually reviving the units. Then, the allegations have been made against the Nigam, alleging, that the Nigam also served a notice on 28.2.86, that the factory does not exist and it is an open plot only, and the petitioner was required to make his representation within 30 days, failing which the units power connection file shall be cancelled. Then, it is alleged that the petitioner received this letter much after the period, the petitioners' efforts for revival of the file failed. Then, the petitioner approached Inter Institutional Committee (IIC) and ultimately the petitioner could not have power connection in this factory till today, and that the amount of much above a million of rupees, invested for the building and plant and machinery, proved to be a wasteful investment. Thus, Nigam was sought to be held responsible for this cost. It is pleaded that the Nigam may be directed to pay at least a sum of Rs. 52,500/- which the petitioners had spent as interest on the amount spent. Then, it is alleged that the petitioner could not get the remaining subsidy, due for disbursement, which he should have received in Feb. 1983 and December, 1985 respectively, for one reason or the other, and on this count it is claimed that RFC should be directed to pay to the petitioner a sum

of Rs. 27,000/- and Rs. 39,264/-, being the amount of subsidy along with compound interest at the rate of 18%. Then, it is alleged that the petitioner persisted with the efforts to revive the units, and requested the RFC on 26.6.86, to refer the revival case to RAJCON, and also approached the IIC for revival, whereupon the petitioner was directed to submit the revival application, which was submitted along with requisite fees, and an assurance letter from Bank of India to consider petitioners' working capital application favourably, in case the RFC considers the petitioners' application for revival. However, on 28.2.87 it was informed by the RFC that revival application has been closed. Then, the petitioner offered collateral security. However, the petitioner was called upon to make payments, it is alleged that on 13.10.87, RFC asked the RAJCON to carry out techno economic feasibility, but at the same time RFC expressed its reservation about petitioner's managerial competence, and RAJCON, on 16.5.1988, completed techno economic study, and found, that both these units are viable if their recommendations are carried out, but then the matter was shelved for about six months, and then revival assistance was sanctioned on 22.2.89, on the condition of collateral security, and concrete payment proposals to the satisfaction of the Dy. General Manager RFC, which according to the petitioner were contrary to the terms of the agreement, mutually agreed on 20.9.88, whereunder the petitioner was not required to make any

payment for a period of one year, and was not required to furnish any collateral security, thereupon the petitioner made representation, but to no good, and inspite of assurance letter of the Bank to provide working capital, ultimately on 16.12.1989 and 18.12.89 RFC gave notice under Section 30 of the Act, being Ex. 77 and 78, whereupon the petitioner met C.M.D. of RFC, and had personal discussions. However, the petitioner did not, and could not, agree to the terms of furnishing any collateral security, as the petitioner could not provide working capital with collateral security. Thus with all usual stories ultimately on 19.6.90 the petitioner was informed that rehabilitation assistance has been cancelled. This communication has been produced as Ex. 89, and the petitioner further approached the General Manager (Development) RFC and I.I.C., but then ultimately on 26.10.91 legal notice was received under Section 30, being Ex. 97 and 98. Then, again the petitioner met the officers, who had directed the petitioner to submit cheques of Rs. 2.25 lacs, before re-schedulement applicable to sick units, could be sanctioned and those cheques were accordingly submitted by the petitioner on 4.12.91, along with request for sanction of re-schedulement. However, on 5.1.91 (sic 5.1.92) the petitioner was told, that he is liable to pay interest at the normal rate on the overdue, after waiver of penal interest. However, the petitioner was directed to furnish another proposal, and accordingly this proposal, is alleges to have submitted, a purported typed

copy whereof is said to have been produced as Ex.-102. However, vide Ex.103 the petitioners' cheques were sent back, and possession of the factory was taken by the RFC on 17.1.92. Then, the petitioner submitted representation to the C.M.D., and Industries Minister, then the petitioner received a communication, that negotiations for the sale of Nidhi Minerals Processing Plants are scheduled on 27.3.93. It is alleged, that the units were advertised to be sold. Interalia with these averments, the petitioners have, in para-77 catalogued the losses suffered by them, and present writ petition has been filed alleging various grounds.

Reply to this writ petition was filed by the RFC on 17.8.93, pleading interalia, that the petitioner had been disbursed 85% of the subsidy, and since the petitioners' unit became non functional, the residual subsidy was not disbursed, and the petitioner did not take any step for revival. Regarding revival assistance it has been pleaded, that revival assistance was offered under two conditions, being that he will be able to get working capital from the bank, and that he will give collateral security, and on both the counts the petitioner failed, and the request of the petitioner to waive these conditions was not agreed, and therefore, ultimately the revival application was closed. Then, it is alleged that when the revival assistance was offered the petitioner took many alibis, and when the case was closed, he came out with the

plea, that he is prepared to give collateral security, provided the RFC waives the penal interest, which was not possible. Thus, the petitioner has always tried to put things on paper instead of getting the things rightfully settled. Then, it is pleaded that the petitioner did not offer any return of the loan, and has failed to avail revival assistance, and there is nothing arbitrary or unfair, on the part of the RFC, in taking over the unit, as that was the only course left open. It has also been pleaded, that the writ petition involves many disputed questions of fact, and requires evidence, which is beyond the scope of the writ jurisdiction. Interalia with these pleadings it has been prayed, that the writ petition be dismissed.

A separate reply has been filed on behalf of Nigam, and therein has also raised preliminary objection that the writ petition raises intricate disputed questions of fact, which cannot be adjudicated in the writ jurisdiction. Then, it is pleaded that apparently the dispute is with the RFC, and all grievance of the petitioner is against the RFC, and thus the respondent no. 3 is as good as proforma respondent. Then, replying para-28 it was pleaded, that the petitioner's factory did not exist, and there was only open plot, and petitioner did apply for 175 HP connection, he was allotted priority number, and therefore, the Nigam reacted to the inaction of

the petitioner, and it was found, that since the factory was not constructed, application of the petitioner for connection was liable to be rejected, and in case the petitioner felt aggrieved he could have made representation to the authority concerned within 30 days failing which the application for connection was liable to be cancelled without further notice. Then, regarding petitioner's approaching I.I.C. etc. also it has been pleaded that the Nigam cannot be blamed, and held responsible for any loss said to have been suffered by the petitioner. Then, it was pleaded that Nigam was never negligent in the matter, and notice for cancellation of connection was rightly issued, granting 30 days time to make any representation, which he failed to make, and as such his application was closed, and that the I.I.C. has given the finding without hearing the Nigam, and that thereafter till today the petitioner has not made any application for revival of the earlier application. Interalia with these pleadings it was prayed that the writ petition be dismissed.

Then, RIICO has not filed any reply.

It may be observed that in the meantime on 1.6.93 and 24.6.93 applications were filed by the petitioner, to take on record Ex. 113 and 114 respectively, which are the advertisements for sale of the petitioner's unit, respectively. Then, it appears that the petitioner's units

were sold in the year 1994, and thereafter the petitioner filed an application for amendment of the writ petition, on 22.1.2003, annexing auction proceedings, and sale approval letter, and certain other documents. It is alleged in the application for amendment that the RFC has sold valuable assets of the petitioner while taking possession, and during pendency of the writ petition they planned a criminal conspiracy, and they have sold the units in highly illegal and arbitrary manner, and on these subsequent events it has become necessary to amend the writ petition. With this, the petitioner has sought to add certain facts and grounds. Vide order dt. 7.10.2003, it was directed that the application for amendment of the writ petition will be considered at the time of hearing. By seeking to add certain facts and grounds, the petitioner wants to add the reliefs of quashing the entire action, and proceedings taken by the RFC, while taking over the units, including sale of units, to be quashed. Then, a direction is sought to handover possession of both the units to the petitioner, in the same condition in which they were taken on 17.1.1992. In the alternative it was prayed, that in case the plant and building is not available for any reason, their market value on the present date of the disposal of the writ petition be awarded, and a prayer has been made to add the purchasers as a party respondent. A reply to this application has been filed by the RFC on 28.7.2005, contending interalia, that the application is grossly

belated, having been filed in 2003, that by amendment the whole complexion of the writ will be changed which cannot be permitted. Then, it is pleaded that by amendment the petitioner wants to challenge action, which was taken in the year Jan. 1992, while the units have been sold long back, and RFC has recovered some dues, and procedure adopted by RFC was according to law, and no wrong has been committed, and as such the amendment cannot be allowed. Then, it is pleaded that the petitioner also filed a suit in the Court of Addl. Civil Judge (J.D.) No. 4, Jodhpur, and therein also filed application under O. 39 Rule 1 & 2, which was dismissed on 4.4.2001, and appeal against that order had also been dismissed, and it was ordered, that the petitioner should be provided an opportunity to file reply to the notice under Section 32-G, it is pleaded, that since the civil suit is pending, therefore, if the petitioners have any grievance, that can be ventilated in that suit. Interalia with this, it is prayed that the application for amendment be dismissed.

Then, on 1.8.2006 an additional affidavit has been filed on behalf of the RFC, deposing interalia, that the RFC, after taking due process of law, issued notice under Section 30, and thereafter took possession of the property as per the procedure mentioned in Section 29, and to recover the dues, sold the units in public auction to one Smt. Kusum Dave in the year 1995 i.e. 11 years back,

and therefore, relief of possession cannot be granted. Then, regarding waiver of interest and compound interest, and settlement and re-schedulement, it was submitted that the petitioner has failed to make due payment of the loans disbursed, and that the petitioner M/s. Shree Grinding Mills was sanctioned loan on 7.8.1980, and since then during 14 years only amount of Rs. 1.10 lacs has been paid. Then, on the request of the petitioner re-schedulement was done, and modification deed was executed on 7.1.84, but the petitioner did not adhere to the revised schedule, and therefore, the same was cancelled, and according to the original schedule the petitioner should have cleared the entire outstanding upto 1.11.1988, and as per re-schedulement by 1.9.91, but the petitioner has not paid anything despite notice, and therefore, possession was taken, and the RFC attempted 19 auctions, then ultimately the unit was sold, the petitioner was apprised of the highest bid, by way of notice, calling him upon that if they have any better bid, they may bring the same, but nothing was done, therefore, the sale was approved. Then, regarding Nidhi Minerals Processing, it was pleaded that on 7.8.1980 a loan of Rs. 10.75 lacs was sanctioned, and upto 1994 a payment of Rs. 0.62 lacs only has been made, which shows that the petitioner had no intention to repay the loan. Then, in case of this unit also re-schedulement was done, and modification deed was executed on 17.1.1984. Then, the petitioner again submitted revival application on

25.9.1986, which was closed on 25.9.1987, and since despite best efforts the petitioner did not make payment, after giving last legal notice the possession of the unit was taken away, and after 18 auctions attempts, highest bid of Rs. 14.00 lacs was received, which was informed to the petitioner, but the petitioner did not respond. Then, it is pleaded that the petitioner did not make any payment of any installment from 1984 onwards, and the revival application was forwarded to the head office. Then, rehabilitation assistance of Rs. 10.30 lacs was sanctioned regarding Shree Grinding Mills, under the Revival and Rehabilitation Scheme, with the stipulations and terms and conditions, and the sanction letter was issued on 22.2.1989, but the petitioner could not fulfill the stipulations, and therefore ultimately it was decided to cancel the rehabilitation assistance. Then, regarding Ex. 66 it was pleaded, that the conditions contained therein were never mutually agreed, and the letter is petitioner's own creation, and that since the two units have common partners, are located side by side, and have the same products, therefore, revival of only one unit was considered, and therefore, the content of Ex.66 are ex-facie wrong. Then, the facts have been pleaded as to how the auctions were conducted, and lower bids were received, and the petitioner was continuously invited on every auction by registered A.D. letter, but he never turned up. Then, it is also pleaded, that on 22.4.2006 letters were

issued to the promoters of the unit, to take benefit of ongoing settlement scheme for deficit/decreetal/write off cases, which scheme was to remain in operation upto 30.9.2006, and the communication has been produced as Annexure R/3, but the petitioner has not responded to it as well. To this affidavit again a counter affidavit had been filed, controverting the averments, and detailing new facts. Then, it was pleaded that the auction was not properly conducted so as to fetch the right price. Then, various other pleadings have been taken, which can be better described as the "usual crocodile tears" shed by the defaulting borrower.

Then, yet another additional affidavit has been filed on behalf of RFC on 4.9.2006, to the effect, that the petitioner has sought reliefs in view of the judgment in Mahesh Chandra's case (Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation & ors. Reported in JT 1992(2) SC-326), while that judgment has been over-ruled, in Haryana Financial Corporation Vs. Jagdamba Oil Mills, reported in 2002(3) SCC-496 = JT 2002(1) SC-482, and in view of the principles propounded therein, in view of the judgment of Hon'ble Supreme Court in U.P. Financial Corporation Vs. Naini Oxygen and Acetylene Gas Ltd., reported in 1995(2) SCC-754, the petitioner is not entitled to any relief, and that, since the petition involve several disputed questions of fact, therefore also, no relief can

be granted to the petitioner. Then, it is also pleaded, that since the property has already been sold, and the petitioner did not challenge the same, and that the petitioner was apprised time and again, but he failed to fetch higher bidder, and remained silent. To this again counter affidavit has been filed on 3.10.2006, admitting that the judgment in Mahesh Chandra's case has been over-ruled in Haryana Financial Corporation’s case, but then in that case Hon'ble the Supreme Court has directed the Corporation, that if the unit is to be sold the corporation shall do so in such a manner, as would bring in the highest price. Then, the application for amendment was referred to, and various other facts were deposed, which need not detain me.

I have heard the petitioner in person, and the learned counsel for RFC, as nobody appeared for the Nigam, and RIICO had not even entered appearance.

So far the story as pleaded in a long drawn manner, in the writ petition, about various alleged lapses from time to time on the part of the RFC, RIICO or the Nigam, which all made the petitioners to suffer various losses, as pleaded in various paras of the writ petition is concerned, it would suffice to say, that all those stories are very old, even if considered from the date of filing of the writ petition, and over and above all this, even a look

at all the papers produced in volumes with the writ petition, do show, that the petitioner never laid any claim for any of the alleged losses, with any of the concerned authority, whether it is RFC, RIICO or Nigam, much less did he claim any interest, or the like. It is a different story, that even if the petitioner might have laid any claim, at the point of time when the writ petition had been filed, for the enforcement of rights, it had become stale and time barred. That apart it is no less significant to note that in the reliefs claimed in the writ petition also, no direction has been prayed, for directing the concerned respondents to make payment of the amounts to the petitioner, or to adjust any outstanding dues. Therefore, those stories need not detain me.

Then, survives precise controversy about quashing of the letter Ex. 103, and the prayer for direction to the RFC to deliver back the possession, and a direction not to charge interest and compound interest during the period during which the petitioner could not manage, and run their business, or in the alternative to settle accounts etc. It would suffice to notice, that the writ petition came up before the Court on 28.7.93, on which date, after hearing learned counsel for the parties, the stay petition was dismissed, and the matter was ordered to be listed for hearing, and it appears, that thereafter the matter of sale of the assets of the unit proceeded ahead, inasmuch as

prior to this on 29.6.93, an undertaking was given on behalf of the RFC, that it shall not finalise the deal, regarding sale of the units in question to any other person and shall not handover the possession of the units to any other party till 29.7.93, and on 28.7.93, as noticed above, the stay petition was dismissed. As noticed above, while recapitulating the pleading, that the unit was sold during 1994-95, and the possession has already been given, and the sale price has also been deposited. In these circumstances, the prayer for quashing the letter Ex. 103 cannot be said to be any more surviving.

Now I may take up the application for amendment of the writ petition, which application has been filed by the petitioner as late as on 22.1.2003, and the reliefs sought to be included are, for quashing of the entire proceedings for taking over possession, and sale, and for direction to handover possession to the petitioner etc. Suffice it to say, that the RFC proceeded with the sale after the stay was vacated, and the proceedings taken by the RFC for sale were very much within the knowledge of the petitioner, as is clear from the fact, that in 1993 itself the petitioner had produced Ex.113 and 114. This coupled with the fact, that the RFC had clearly pleaded, that from time to time the petitioner was informed of every highest bid being received, and was called upon to bring still higher bid, if possible, but he kept silent. This does

clearly show, that the petitioner was in full know of the things, but did not move the application at the earliest opportunity, with the result, that it rather allowed the purchaser to part with the money, being purchase price, and to commission the units, and after about a decade, this application has been filed. This application is opposed by the RFC by filing a detailed reply, specifically raising the objection of delay, and also pleading, that the petitioner has already filed a suit in the Court of Addl. Civil Judge (J.D.) No. 4, Jodhpur, wherein he filed an application for temporary injunction, which was dismissed upto Appellate Court, and in the interest of justice the petitioner was allowed opportunity for filing reply to notice under Section 32-G, and the suit is still pending, therefore, the grievance of the petitioner can be decided in that suit only. In my view, in the totality of circumstances, including the long delay in filing the application for amendment, more-so, in view of the fact, that the RFC had proceeded to auction the assets only after vacation of the stay by this Court, and the RFC could not be expected to keep sitting over the asset indefinitely, till the writ petition is decided, at the pain of the purchaser being held up on tenterhooks, and therefore, the application for amendment is dismissed.

Thus when the application for amendment is dismissed, so far the remaining grievances are concerned,

overall comprehension of the entire material on record does show, that within the meaning of feeling expressed by Hon'ble the Supreme Court, in Haryana Financial Corporation's case, the petitioner is not entitled to any indulgence, inasmuch as, it has clearly been held therein, that the fairness required of the corporations cannot be carried to the extent of disabling them from recovering what is due to them. It has further been held that the matter can be looked at from another angle. The corporation is an independent autonomous statutory body having its own constitution and rules to abide by, and functions and obligations to discharge. As such in the discharge of its functions, it is free to act according to its own light. The views it forms, and decisions it takes, are on the basis of the information in its possession, and the advice it receives, and according to its own perspective, and calculations. It has further been held, that unless its action is malafide, even a wrong decision, by itself is not open to challenge. Hon'ble the Supreme Court further held, that it is not for the courts, or a third party, to substitute its decision, however, more prudent, commercial, or businesslike, it may be, for the decision of the corporation, and in this regard the judgments in U.P. Financial Corporation Vs. Naini Oxygen & Acetylene Gas Ltd., reported in JT 1994(7) SC-551, and Karnataka State Financial Corporation Vs. Micro Cast Rubber & Allied Products (P) Ltd., reported in JT 1996(6) SC-37, were

reaffirmed.

It has clearly been pleaded by the RFC, that re-schedulement was granted to the petitioner in the year 1984, and modification deeds were executed, but the petitioner never kept to his words, and did not make any payment. While arguing the writ petition I pointedly put question to the petitioner, as to when the loan was sanctioned, and how much payment was made during all this period of time, and the answer given was, about having paid practically the same amount, as is claimed by the RFC to have been paid, which is less than even two lacs.

Thus an overall comprehension of the material on record does show, that petitioner had all the time been carrying on correspondence, and making offers for re-schedulement, or revival, but never kept to the stipulations imposed in that regard by the RFC, rather every-time even the petitioner wanted to dictate his own terms, and had the audacity to inform the Corporation not to present the cheques sent by him, and ultimately those cheques were returned by RFC also.

Then, notwithstanding all the above, even if the petitioners have something to show, about there being any dispute in the amounts so quantified, and the interest, or compound interest, since the proceedings under Section 32-G

are already going on, wherein the petitioners have already been given opportunity to raise objection, and to establish them.

In that view of the matter, taking the over all view of the matter, I do not find the petitioners to be entitled to any of the reliefs claimed in the writ petition.

The writ petition is, therefore, dismissed. The parties shall bear their own costs.

(N P GUPTA),J.

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